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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1957

No. 597

HAROLD P. BALLF,
Petitioner,

vs.

THE PUBLIC WELFARE DEPARTMENT OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, and RONALD H. BORN, director thereof, and THE CIVIL SERVICE COMMISSION OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, and individual members thereof, FRANCIS P. WALSH, WILLIAM A. LAHANIER and CHARLES T. McDONOUGH, and THE RETIREMENT BOARD OF THE CITY AND COUNTY OF SAN FRANCISCO EMPLOYEES' RETIREMENT SYSTEM, and IRA G. THOMPSON, secretary thereof,
Respondents.

PETITION FOR REHEARING OF ORDER ON DENIAL OF PETITION FOR A WRIT OF CERTIORARI.

HAROLD P. BALLF,
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Petitioner respectfully submits this petition for rehearing in accordance with Rule 58 (2), particularly that portion thereof which reads "or to other

substantial grounds available to petitioner although not previously presented (e.g., Schriber-Schroth Co. v. Cleveland Trust Co., 305 U.S. 47, 50)." The grounds not heretofore presented are:

First, there was a further violation of the provisions of Article XIV of the Constitution of the United States than was previously urged.

Second, Article VI, Section 2, of the Constitution of the United States, binds State Court judges by the "supreme law of the land", and definitely substantiates the jurisdiction of the Supreme Court of the United States.

Third, there was no justification for petitioner's discharge (dismissal) because Section 154 of the Charter of the City and County of San Francisco sets forth the only grounds for dismissal, and loss of residence is not one of those grounds.

Fourth, procedures in the San Francisco city government would not be embarrassed by a decision in favor of petitioner.

DISCUSSION OF REASONS FOR GRANTING REHEARING AND ADDITIONAL REASONS FOR GRANTING THE WRIT OF CERTIORARI.

FIRST, THERE WAS A FURTHER VIOLATION OF THE PROVISIONS OF ARTICLE XIV OF THE CONSTITUTION OF THE UNITED STATES THAN WAS PREVIOUSLY URGED.

The particular provision reads "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United

States; . . .". Even granting that the California Courts have properly interpreted the provisions of Section 7 of the Charter of the City and County of San Francisco (petitioner emphatically denies that they have) that law cannot be *enforced* to abridge a privilege of a citizen of the United States. Its enforcement would do so because petitioner is a citizen of the United States, he was given educational *privileges* under Federal Public Law 346, and he is being denied the protection of these privileges not only by an enforcement of Charter Section 7, but what is more by the enforcement of an injudicious interpretation of Charter Section 7.

The United States Constitution says that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; . . .". It is the duty of the Supreme Court of the United States to uphold the Constitution of the United States.

SECOND, ARTICLE VI, SECTION 2, OF THE CONSTITUTION OF THE UNITED STATES, BINDS STATE COURT JUDGES BY THE "SUPREME LAW OF THE LAND", AND DEFINITELY SUBSTANTIATES THE JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES.

Article VI, Section 2, states:

> "This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the Judges in every state shall be bound thereby, anything in the

Constitution or laws of any state to the contrary notwithstanding."

Public Law No. 346 was made pursuant to the Constitution of the United States. It is therefore the supreme law of the land. It gave petitioner the privilege of continuing his education in any state of the United States or even in a foreign country, and "the Judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding." The Judges of the California Courts refused to be bound thereby, and set up Section 7 of the Charter of the City and County of San Francisco, with specific reference to their interpretation of its residence requirement, and seek to *enforce* that law as a tool to circumvent the operation of Public Law No. 346, thus endeavoring to justify the dismissal from the city service of petitioner who was taking advantage of the privileges accorded by federal Public Law No. 346, but

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THIRD, THERE WAS NO JUSTIFICATION FOR PETITIONER'S DISCHARGE (DISMISSAL) FROM THE CITY SERVICE, BECAUSE SECTION 154 OF THE CHARTER OF THE CITY AND COUNTY OF SAN FRANCISCO SETS FORTH THE ONLY GROUNDS FOR DISMISSAL, AND LOSS OF RESIDENCE IS NOT ONE OF THOSE GROUNDS.

Section 154 (Petition for Writ of Certiorari, Appendix A, p. iv), states the grounds for "removal or discharge". Section 7, if its provisions are relevant in this case and petitioner denies that they are, provides for "removal" only, and not for dismissal in

event of loss of residence. (Petition for Writ of Certiorari, Appendix A, p. iii.)

Note the wording "removal or discharge." Webster's Dictionary defines "or" as "A co-ordinating particle that marks an alternative . . ." It further defines "alternative" as "Offering a choice of two (or, loosely, several) things; offering for choice a second thing or proposition". While the opinion (Petition for Writ of Certiorari, Appendix B, p. xv), states that there is no merit to petitioner's contention that "removal" differs in its effect from "dismissal," it is obvious from the above that the framers of the charter clearly contemplated such a difference. They provided merely for "removal" not for "dismissal" in the event of failure to maintain domiciliary residence, as is definitely specified in Section 7 of the Charter.

Removal from a position does not entail complete separation from city employment such as does the drastic action of *dismissal* from the service. The name of an employee removed from his position may still be maintained on other civil service lists for which he may have qualified, and on re-employment registers. Dismissal from the service is discharge for cause which separates the individual from his position, strikes his name from all available eligible lists or re-employment registers, and effectively blackballs him from any further service with the city, or with any other employment agency for that matter, because of the insertion upon his record of a discharge for cause. The drastic action of *dismissal* is reserved only for those grave reasons specifically set forth in

Section 154 of the Charter. Hence, petitioner was unlawfully discharged (dismissed) from his position, and

FOURTH, PROCEDURES IN THE SAN FRANCISCO CITY GOVERNMENT WOULD NOT BE EMBARRASSED BY A DECISION IN FAVOR OF PETITIONER.

Petitioner would simply be returned to his former status of educational leave, without pay, from his city employment. The Civil Service Commission of the City and County of San Francisco would then be in the position of having to do what it should have done in the first place under its Rule 31.3 (Petition for Writ of Certiorari, Appendix A, p. v), that is to either approve or disapprove the leave. If the leave is approved there is no problem. If it is disapproved, then petitioner must either make himself available for employment in his classification B-512 General Clerk-Typist (of which there are position vacancies available in the Public Welfare Department), or relinquish his employment status. There is no question of returning to the same job as it has long since been permanently filled. (R. 23 (11), lines 11 to 16 inclusive.) Hence, the educational leave, granted much later, was not granted from a particular position but from an employment classification, and no permanent employee would be injured. For this reason, the statement in the opinion (Petition for Writ of Certiorari, Appendix B, p. xi, commencing last sentence of page), is entirely erroneous. If petitioner did not return to his employment he would have to relinquish it, but in that event he would not have the

stigma of a dismissal or discharge for cause hanging over him.

CONCLUSIONS.

Based on the authorities heretofore, and herein presented, and on the additional authority of Article III, Section 2, 2 of the Constitution of the United States which gives the United States Supreme Court "appellate jurisdiction, both as to law and fact, . . ." of cases arising under "the laws of the United States" this Honorable Court has jurisdiction in the instant case, and petitioner prays for a rehearing herein, for the issuance of a writ of certiorari, and for his costs and disbursements.

Dated, Walnut Creek, California,
January 22, 1958.

Respectfully submitted,
HAROLD P. BALLF,
Attorney at Law in Pro Per.

CERTIFICATE

I certify that this petition is presented in good faith and not for delay, and also that the petition is restricted to "other substantial grounds available to petitioner although not previously presented," and subscribe my manuscript signature hereto.

Dated, Walnut Creek, California,
January 22, 1958.

HAROLD P. BALLF,
Attorney at Law in Pro Per.